FILED

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OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA
(Oct. term, 2000)

MICHAEL R. OLSEN, Petitioner
v.
SUPERIOR COURT OF SACRAMENTO COUNTY
(Superior Court, Appellate Division, and Arbitration Unit),
Respondent

THOMAS W. HOLLANDER AND JUDITH J. HOLLANDER,
Real Parties In Interest

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Michael R. Olsen

Petitioner Pro Se / In Propria Persona

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COPY 28

53pp

I. QUESTIONS PRESENTED FOR REVIEW

Petitioner respectfully requests certiorari on the following grounds:

ISSUE 1

Did the Appellate Division deprive the petitioner of his due process rights when an Appellate hearing was not recorded in accordance with the California State Constitution, and the Federal Constitution, when such deprivation was the cause for the Higher Courts not to have evidence of the deprivation complained of in the Lower Courts; also when the Appellate hearing determination was not articulated in writing so as to document the legal basis for such a determination, and such determination without documentation on an Appellate level deprived the petitioner of his due process rights.

ISSUE 2

Was the petitioner Olsen's "Equal Protection " rights provided for by the 14th Amendment violated when the state denied requests by the petitioner to adhere to, or enforce, the mandatory California law indicated by the wording "shall" (see California Code of Civil Procedure CCP 1141.22, CCP 1141.23, Cal. Rule of Court CRC 1605, CRC 1607, CRC1611).

ISSUE 3

Was the petitioner Olsen's "Due Process" rights provided for by the 14th Amendment violated when the state denied requests by the petitioner to adhere to, or enforce, the mandatory California law indicated by the wording "shall" (see California Code of Civil Procedure CCP 1141.22, CCP 1141.23, Cal. Rule of Court CRC 1605, CRC 1607, CRC1611).

ISSUE 4

Is an arbitrator without subject matter jurisdiction when he practices judicial legislation?

ISSUE 5

Was the Petitioner Olsen's substantive and procedural due process rights violated when the arbitrator made an adjudication without subject matter jurisdiction?.

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r). Petition for Review filed with the California Supreme Court, December 27, 1999. Petition denied by Supreme Court of California, January 13th, 2000. No articulation, opinion, or reasons given for denial. 19

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II. STATEMENT OF JURISDICTION

1. Petitioner contends that the Supreme court may exercise jurisdiction over this case pursuant to Supreme Court Rules 10b, and Rule 10c.

2. The California State Supreme Court had made a decision which was in conflict with other state courts, and U.S. Courts of appeal, and the Supreme Court.

3. Specifically, petitioner was denied relief in accordance with the "Statutory Interpretation Rules" mandatory language of the law, Separation of Powers Provision as it applies to "Judicial Legislation", and (see CRC 1605), in which the U.S. Supreme Court had decided in accordance with the law, (see *Caminetti v. United States* 242 U.S. 470 (1917) (The guiding principle of the Supreme Court in *Caminetti* was the "Plain Meaning" rule: "Where the Language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and

the rules which are said to aid doubtful meanings need no discussion. There is no ambiguity in the terms of this act.").

4. The California State Supreme Court had made a decision which was in conflict with other state courts, and U.S. Courts of appeal. Specifically, petitioner was denied relief in accordance with mandatory language of the law (see CRC 1605), in which other State supreme courts had decided in accordance with the law, (see *Zimmerman Brush Co., v. The fair Employment Practices Commission*, 82 Ill. 2nd 99; 411 N.E. 2nd 277 (1980)), (reversed on other grounds, but point of "lack of jurisdiction" upheld by Supreme Court in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422) and other U.S. appeals courts have decided in accordance with the law. Also see *Prince v. Hunter*, 388 So. 2nd 546, 1980, *Ex Parte Brashner* 555 So. 2nd 192, *Ex Parte Mary L. Gauntt* 677 So. 2nd 204 1966 (The word "shall" in the statute is used in the mandatory sense it is true that shall "shall" may be

construed permissive where from the circumstances it is obvious that the legislature intended so…).

5. California State Supreme Court entered their judgment denying review on January 13th, 2000.

III. RELEVENT LAWS APPLICABLE TO THE CASE

1. United States Constitution, 14TH Amendment: "…nor shall any State deprive any person of life, liberty, and property, without due process of law; nor deny to any person within its jurisdiction the Equal Protection of the laws." (substantive and procedural due process).

2. California Rules of Court, Rule 40(d): "The word 'Shall' is mandatory, and the word 'May' is permissive."

3. California Code of Civil Procedure, CCP § 1141.23: "Correction, modification, or vacation of award. The Judicial Council rules shall specify the grounds upon

which the arbitrator or the court, or both, may correct, modify, or vacate an award."

4. California Rules of Court Rule 1605(b): "If the arbitrator declines to serve or does not complete the hearing within 90 days after the date of the assignment of the case to him or her, including any time due to continuances granted under rule 1607, the administrator *SHALL* vacate the appointment of the arbitrator and *SHALL* return the case to the top of the arbitration hearing list, restore the arbitrator's name to the list of those available for selection to hear cases, and appoint a new arbitrator..." *(emphasis added).*

5. Separation of Powers provision of the United States Constitution.

6. Article VI section 1-**Judicial Power;Courts of Record**. California State Constitution The judicial power of this State is vested in the Supreme Court,...All except justice courts are courts of record.

IV. STATEMENT OF THE CASE

1. Procedural History

A Type of Arbitration not Provided For By Statute, in violation of Supremacy Clause

a). The main contention is that the arbitrator did not have the requisite jurisdiction, (in accordance with CRC 1605, CRC 1607, CRC 1611, CCP § 1916, and CCP § 1917), that led to the June 1st, 1998 Judgment. The arbitrator made a judgment based upon (a law which does not exist) called "Binding Judicial Arbitration", this hybrid is not provided for in the California State statutory provisions for Arbitration, and this hybrid is not provided for in the Federal statutory provisions for Arbitration.

An additional problem, the statute of limitations ran on the Arbitrator. The arbitrator responded after the statutory permitted time. Therefore, he did not have jurisdiction..

OPERABLE FACTS IN A NUTSHELL:

That the (citizen Olsen) without requisite consent was guided into arbitration. The type of arbitration unknown to him, until a decision was made by the Arbitrator. The (citizen Olsen) was advised by his legal advisor that there was no such law.

That the (citizen Olsen) applied to Sacramento Superior Court (Law & Motions Unit) to Vacate the Arbitration Award., to Vacate the Arbitrators Appointment, and to Vacate the Arbitrators Judgment. The basis of the (Citizen Olsen) request for the above mentioned to be vacated was, he did not willfully consent to arbitration, when he did get legal advise he was told there was no law (State or Federal) providing for "Binding Judicial Arbitration, and he was advised that the agreement to arbitration was void due to fraud. He presented his complaints to the Sacramento Superior Court (Law & Motions) Department. The Law & Motions department denied his request and made a determination in favor of the

arbitrators decision. Essentially, this leaves a citizen without meaningful access to the Courts. In that the (Citizen Olsen),

1) participated in an arbitration, for which there is no evidence to prove he gave clear & concise consent .

2) **There was no transcript-record kept of the arbitration meeting**.

3) The issues argued at the Sacramento Superior (Law & Motions) department, was based upon the memory of the arbitration events indicated in the briefs of the litigants, which was of personal knowledge by the (Citizen Olsen) but, is hearsay from the briefs of the opponents.

4) The Sacramento Superior (Law & Motions) department made a determination in favor of the opponents

5) The (Citizen Olsen) was directed to make an appeal with the (Appellate Division/aka/Appellate Department).

6) **There was no transcript taken of the (Appellate Division/aka/Appellate Department)l hearing.**

7) The (Citizen Olsen) made an application for a writ of mandate to the Supreme Court of California.

8) The Supreme Court of California-transferred the case to the California Court of Appeals.

9) The California Court of Appeals, denied the application.

10) The Supreme Court of California denied review.

The California Constitution guarantees all Courts will be Courts of record. (see Cal. Const. Art. VI, § 1) The Federal Courts are Courts of Record.

Procedural Due Process Violations - Procedures not in Accordance with Federal or State Law.

The (Citizen Olsen) was deprived of his constitutional guarantees to due process. In that the procedure used after

the Questionable Arbitration Transaction & (Law & Motions) led to a dead end for the (Citizen Olsen). Essentially, all of the events which occurred after (Law & Motions) was procedurally faulty. The fault was that there was no record taken of the (Appellate Division/Department) hearing to present to the California Courts of Appeal. The (Citizen Olsen's) application to the California Court of Appeals, was based upon state & federal constitutional violations occurring in the lower courts. The Sacramento Superior Court (Law & Motions) did not make a determination on the merits of the case, nor is it their position to do so. The arbitration unit, where the case originated acted as the Trial Court, however, the arbitration was conducted under a NON-Statutory type of arbitration called "Binding Judicial Arbitration". And, it is here where the fault first arises in the process. There was no record of this Hybrid proceeding. The California Legislation. has not provided for this type of

"hybrid, arbitration", and all appellate courts are to be courts of record.

Further there was no record of the lower (Appellate Division/Dept.) proceedings, where the petitioner Olsen complained there was no statutory provision providing for "Binding Judicial Arbitration", therefore there was no evidence of that having occurred. Additionally, the decision made by the (Appellate Division/Dept.) did not articulate the law and the facts on which the defendants was entitled to judgment, as would be afforded other petitioners in a Court of Appeal. This faulty process not only concluded in a dead-end street for the (Citizen Olsen), but would hold the same ending for any Citizen so situated. Terminal endings such as stated above would adversely, unfairly, and unequitably effect certain classes of Citizens, and provide for an un-equal application of the laws and therefore, un-equal protection of the law. The Appellate Division not being a court of record and by not articulating the basis for their determinations, violates

the due process rights of the petitioner and all other petitioners in his position.

The petitioner contends that the judgment was obtained by certain events that included fraud, conspiracy, collusion, and surprise under CCP § 473, CCP § 1916, and CCP § 1917.

b). After the petitioner 's former attorney and opposing counsel stripped the plaintiff of his right to jury trial, trial date, associated constitutional rights to due process, and rights to appeal, the petitioner attended an arbitration hearing that finally occurred on April 25th, 1997, almost 6 months after the originally scheduled trial date. Petitioner arrived for the arbitration hearing, unknowing at the time of the many instances of fraud (statutory and common law) and fraud committed by extortion to the wife of the petitioner in violation of cal. penal code section 182, 518, 519, 520, 531A, collusion, and cover up schemes that led to the trail date being vacated

and a non-law called "Binding Judicial Arbitration being placed in it's stead.

c). The petitioner left the arbitration hearing with a feeling that the arbitrator did not fairly address the petitioner's issues, refused to hear the petitioner, and was biased against the petitioner, that the arbitration hearing was conducted, in the light that one of the defendants (Thomas Hollander) mysteriously and without prior notice, and consent did not appear. That although objections were raised about the coercion to arbitrate, the hearing went forward anyway. After the arbitration hearing the petitioner had a sense that the arbitrator might have been friends with opposing counsel, and did him favors. This feeling was before the arbitration award was rendered. The petitioner did not know what to do. The subsequent arbitrator's award was unfavorable to the petitioner.

Law and Motions Department

d). After several attempts of the defendant's counsel demanding that petitioner pay him money for which no legal judgment had ever been entered on, the petitioner filed a motion to vacate the arbitrator's award do to misconduct. A ruling was made in department 53 of the Sacramento Superior Court on March 12th, 1998 narrowing the issues, and making a determination that the arbitration was "Judicial Arbitration". Additionally, the ruling rendered the defendant's petition to confirm the arbitration award "moot" .

e). After checking with the arbitration unit, the petitioner was directed that in regards to the arbitrator not complying with the statutory timelines the petitioner should seek an order to vacate the arbitrator's appointment in Department 44 of Sacramento Superior Court (Accelerated Civil Trials) before Hon. Steven H. Rodda. Judge Rodda never actually addressed the issue (see

Reporters Transcript of proceedings before Hon. Steven H. Rodda).

f). June 1st, 1998, Department 53 made a ruling denying the petitioner's motion to vacate arbitrator's award due to misconduct, for a lack of evidence.

g). The petitioner filed a motion August 6th, 1998 , based on newly occurring events:

1). Judgment was entered in the case on June 1st, 1998 (please take Judicial Notice to the court's record of entry of judgment). The entry of judgment triggered the application of CCP § 473. The petitioner also contends that the entry of judgment triggered the application of CCP §§ 1916 and 1917.

2). Newly filed papers were received into the record, submitted by counsel for defendant , and the arbitrator's staff . These papers were filed into the judicial record on June 5th, 1998 .

3). The newly filed papers appeared to be an attempt of opposing counsel HAYES, and arbitrator staff MARDER, to combat a motion filed by petitioner in department 44 (Accelerated Civil Trials Dept.), before the Honorable Steven Rodda in order to vacate the arbitrator's appointment in accordance with CRC Rule 1605. The filed papers and corroboration of HAYES and MARDER make an attempt to cover up the fact that the defendant in the underlying case failed to appear for the arbitration hearing.

4). This cover up attempt also seems to be initiated to hide the actions of the arbitrator and staff that exceeded statutory powers by entering a judgment based upon a non-law. Additionally, the cover up attempted to work to hide collusion and fraud between opposing counsel HAYES, arbitrator, and staff to extend more time and benefit to the defendant HOLLANDER. There had been suspicions by petitioner, and the newly filed papers

had uncovered some of the suspicions, and provided new evidence.

h). In no manner did the defendant deny or oppose the allegations of fraud and collusion between HAYES and MARDER, in regards to the papers filed , and the allegations of the scheme to cover up and conceal .

i). In no manner did the defendant deny or oppose the allegations that the arbitrator had no subject matter jurisdiction, and had lost jurisdiction. No argument or opposing authorities were offered by defendant in regards to a lack of or want of subject matter jurisdiction of the arbitrator.

j). In no manner did the defendant deny or oppose the assertion that since judgment was entered on June 1st, 1998, CCP § 473 was triggered and presented to move the court for an order to vacate or set aside the judgment due to fraud, collusion, and surprise, and also under CCP §§ 1916, 1917.

k). Petitioner filed a reply to HOLLANDER'S opposition , on August 28th, 1998 .

l). On August 31st, 1998, the court (Superior Court - Dept. 53) entered into the minutes the tentative ruling accepted by the court, denying oral argument, and making a final ruling disposing of all issues between the parties.

Superior Court, Appellate Division

m). An appeal to the Appellate Division of the Superior Court of Sacramento County was made, filed November 5th, 1998.

n). Oral argument was held on the appeal 7-16-99, and a ruling on the submitted matter made August 27th, 1999, affirming the judgment of the law and motions court. No articulation, opinion, or reasons were stated for the affirmance.

o). Petition for re-hearing and application for transfer was denied October 13th, 1999.

The Writ Petition to Court of Appeals, 3rd District

p). Writ petition originally filed with Supreme Court on October 18th, 1999, was transferred and re-filed with the Court of Appeals, 3rd District, November 2nd, 1999.

q). Writ petition denied by Court of Appeals, 3rd District, December 16th, 1999. No articulation, opinion, or reasons given for denial.

r). Petition for Review filed with the California Supreme Court, December 27, 1999. Petition denied by Supreme Court of California, January 13th, 2000. No articulation, opinion, or reasons given for denial.

2. Statement of facts

A). Undisputed Facts

a). Arbitration was deemed :Binding Judicial Arbitration a hybrid of Judicial Arbitration, this decision was made by Law & Motions Judge Lewis of the Sacramento Superior Court.

b). Original arbitration hearing date was scheduled on March 13th, 1997.

c). Arbitrator exceeded statutory timelines dictated by CRC Rules 1605, 1607, 1611 , unopposed/undisputed by HOLLANDER or court.

d). Falsified original arbitration hearing date of March 15th, 1997, undisputed and unopposed by HOLLANDER , and undisputed by court.

e). Defendant failed to appear for the originally scheduled arbitration hearing date, undisputed and unopposed by HOLLANDER, and undisputed by court.

B). Disputed facts

1) That there is no such law as Binding Judicial Arbitration upon which to base a judgment.

2) That according to the "Plain Meaning " terms of a statute, shall is mandatory within the "Plain Meaning" provision.

3) There have been extrinsic fraud done onto the California Courts, by way of conspiracy by three representing attorneys to fix the outcome of a case, by using fraud, and cover ups. This fraud onto the Courts of California was

accomplished because the three attorneys colluded, and knew that the Civil Procedure set up for Small Cases, such as the Petitioners would be ignored by the Judiciary as being a small grievance not subject to due process procedures and safeguards.

V. ADDITIONAL REASONS THE CASE SHOULD BE REVIEWD BY THE U.S. SUPREME COURT

1. A necessity to secure uniformity of decision.

2. Is a judgment based upon "Binding Judicial Arbitration" judicial legislation? This law was not provided for in the California statutes which provided for Arbitration, a determination based upon and which recognizes a hybrid type of Arbitration not provided for by the State or Federal Law, tantamounts to Judicial Legislation which is not in compliance with the Separation of Powers provision (See *Skinner v. Oklahoma*, 316 U.S. 535).

3. There are inconsistent appellate decisions supporting the underlying contentions of the parties.

4. To resolve the problem of legislative interpretation as it applies to the term "Shall", as it applies to the instant case (ref. CRC 1605).

5. To settle important questions of law.

There are issues of law that will arise frequently. There are issues of law that are of great public significance and statewide concern. There are issues of law involving the public confidence in the California Court system.

VI. OPINION SOUGHT TO BE REVIEWED

In the Supreme Court of California En Banc No. S084664, Michael R. Olsen, Petitioner v. Superior Court of Sacramento, Respondent, Thomas W. Hollander Et Al., Real Parties In Interest:

Application for stay and petition for review DENIED.

GEORGE, Chief Justice.

VII. CONCLUSION

Petitioner respectfully submits that this petition should be considered for the forgoing reasons, and there are compelling issues of public and statewide importance that can come about frequently.

Due Process and Equal Protection is lacking because there is no law provided for as 'BINDING JUDICIAL ARBITRATION"

The Petitioner/Olsen was not given an opportunity to be heard on the issues as to whether the law did or did not exist, (as applied to him) before the arbitrator made a judgment based upon a non-existing law.

Because there was no statutory law which provided for "Binding Judicial Arbitration" the arbitrator acted without jurisdiction, and that by so acting violated the due process rights of the petitioner/Olsen as it pertains to the petitioners property and liberty.. .

There is no statutory act or provision providing for 'BINDING JUDICIAL ARBITRATION".
Contractual arbitration under the California State Law, and under the Federal Law, is based upon the mutual consent and agreement of the parties. Hence, those who mutually agree to contractual arbitration are "BINDED' to their agreement. Both parties are subject to and are estopped

from further appeal of the issues, based upon that prior agreement and are so bound.

Judicial arbitration under the California State Law is by way of court referral and the parties are subject to provisions of the California State Law, CCP 1141 et seq. Parties to the Judicial arbitration are subject to and may request an appeal based upon De Novo Review.

The prohibited judicial legislation, of "Binding Judicial Arbitration" creates a legal quagmire which is arbitrary, capricious, and ambiguous. The Petitioner/Olsen and others in his class are made subject to the whimsical application of a "judicial legislation" , which can un-equally apply the laws and therefore those class of citizens will receive un-equal protection of the law.

a)The constitutional safeguards given properly legislated laws are all missing, from this hybrid "Binding Judicial Arbitration".

b)There are a myriad of constitutional violations, most affecting the fundamental rights and privileges of citizens.

The basis and justification for such disregard of civil rights can-not be rational. To consider an intermediate reason to justify such disregard for civil rights, is not enough, there can only by a highly compelling reason why years of civil rights legislation are ignored. Even a compelling reason would fall short to justify "judicial legislation", which deprives citizens of their constitutional rights (without opportunity for redress) and violates the separation of powers provision of the United States Constitution and the Constitution of the State of California.

"Judicial Legislation" violates the equal protection clauses of the fourteenth amendment by creating selective classes of citizens who will not be able to attain meaningful access to the courts of the United States.

The power to do "judicial legislation" exercised and allowed , may have a devastating effect. If not properly administrated it can cause oppression to a class of citizen and lead to the civil rights demise of that select group This

has caused irreparable injury to the Petitioner/Olsen and would to others in his class.

That strict scrutiny should be used to evaluate the classification of citizens which are created and become victims of and by, "Judicial Legislation" Discrimination is created against the Petitioner/Olsen and those like him. in violation of the constitution guaranty of just and equal laws.

Legislative Interpretation is based upon the legislative intent, as applied to the circumstances. Important issues of following the mandatory language of the law, public confidence in the courts to follow precedential decisions, and mandatory statutory law, and providing for a uniformity of application of the codes, statutes, and court decisions should not be ignored. Equal application and protection of the laws should not be ignored.

Also, the Petitioner in many occasions was not given meaningful access to the courts, when he petitioned

the Courts for redress of his grievances, and this tantamounts to a grave injustice.

Dated: April 11th, 2000

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APPENDICES

APPENDIX A

[Filed Jan 13, 2000]

Third Appellate District Number CO34028

SO84664

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

Michael R. Olsen, Petitioner

v.

SUPERIOR COURT OF SACRAMENTO COUNTY,

Respondent

Thomas W. Hollander at al. Real parties in interest

Application for Stay and Petition for Review DENIED.

GEORGE

Chief Justice

APPENDIX B

[FILED December 16, 1999]

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

THIRD APPELLATE DISTRICT

Michael R. Olsen,

Petitioner,

v.

THE SUPERIOR COURT OF SACRAMENTO

COUNTY,

Respondent;

Thomas W. Hollander at al.,

Real parties in interest

C034028

SACRAMENTO COUNTY

NO.96AM0027

BY THE COURT:

The Petition for Writ of Mandate, certiorari or other relief with request for stay is DENIED.

Dated: December 16, 1999

BLEASE, Acting P.J.

APPENDIX C

CONSTITUTIONAL PROVISIONS

1.) The 14th Amendment, section 1. of the United States Constitution provides:

AMENDMENT 14, section 1.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2.) Article 1 of the United States Constitution, the structure is based upon the Separation of Powers;

APPENDIX D

UNITED STATES SUPREME COURT RULES

Rule 10 of the Supreme Court Rules Provides:

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a

lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

APPENDIX E

CALIFORNIA CONSTITUTIONAL PROVISIONS, STATUTORY PROVISIONS, AND RULES OF COURT

1.) Article VI, Section 1 of the California State Constitution states that:

§ 1 Judicial Power; Courts of Record

The judicial power of the state is vested in the Supreme Court, Courts of Appeal, Superior Courts, and Justice Courts. All except justice courts are courts of record.

2.) Section 1141.23 of the California Code of Civil Procedure provides:

§ 1141.23 Effect of award. The arbitration award shall be in writing, signed by the arbitrator and filed in the court in which the action is pending. If there is no request for a de novo trial and the award is not vacated, the award shall be entered in the judgment book in the amount of the award. Such award shall have the same force and effect as a judgment in any civil action or proceeding, except that it is not subject to appeal and it may not be attacked or set aside

except as provided by Section 473, 1286.2, or Judicial Council rule.

3.) Section 473 of the California Code of Civil Procedure provides:

§ 473. Amendment of pleadings. *(a) (1)* The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of any party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

(2) When it appears to the satisfaction of the court that the amendment renders it necessary, the court may postpone the trial, and may, when the postponement will by the

amendment be rendered necessary, require, as a condition to the amendment, the payment to the adverse party of any costs as may be just.

(b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment was taken. However, in the case of a judgment, dismissal, order, or other proceeding determining the ownership or right to possession of real or personal property, without extending the six-month period, when a notice in writing is personally served within the State of California both upon the party against whom the judgment, dismissal, order, or other proceeding has been taken, and upon his or her attorney of

record, if any, notifying that party and his or her attorney of record, if any, that the order, judgment, dismissal, or other proceeding was taken against him or her and that any rights the party has to apply for relief under the provisions of Section 473 of the Code of Civil Procedure shall expire 90 days after service of the notice, then the application shall be made within 90 days after service of the notice Upon the defaulting party or his or her attorney of record, if any, which ever service shall be later. No affidavit or declaration of merits shall be required of the moving party. Not withstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorneys sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court

finds that the default of dismissal was not in fact caused by the attorneys mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault. Direct the attorney to pay reasonable compensatory legal fees and cost to opposing counsel or parties. However, this section shall not lengthen the time within which an action shall be brought to trial pursuant to section 583.310.

(c) (1) Whenever the court grants relief from a default, default judgment or dismissal bused on any of the provisions of this section, the court may *Do Any Of The Following:*

(A) Impose a penalty of no greater than one thousand dollars ($1,000) upon an offending attorney or party.

(B) Direct that an offending attorney pay an amount no greater that one thousand dollars ($1,000) to the State Bar Client Security Fund.

(C) Grant other relief as is appropriate.

(2) However, where the court grants relief from a default or default judgment pursuant to this section based upon the affidavit of the defaulting party's attorney attesting to the attorney's mistake, inadvertence, surprise, or neglect, the relief shall not be made conditional upon the attorney's payment of compensatory legal fees or costs or monetary penalties imposed by the court or upon compliance with other sanctions ordered by the court.

(d) The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or orders directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.

4.) Section 1916 of the California Code of Civil Procedure provides:

§ 1916. Impeachment of judicial record. Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, collusion

between the parties, or of fraud in the party offering the record, in respect to the proceedings.

5.) Section 1917 of the California Code of Civil Procedure provides:

§ 1917. The jurisdiction necessary to a judgment. The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

6.) Rule 40 of the California Rules of Court provides, in pertinent part, that:

Rule 40. Definitions

(d) The word "shall" is mandatory and the word "may" is permissive.

7.) Rule 1605 of the California Rules of Court provides, in pertinent part, that:

Rule 1605. Assignment of cases

(b) If the arbitrator declines to serve or does not complete the hearing within 90 days after the date of the assignment of the case to him or her, including any time due to

continuances granted under rule 1607, the administrator shall vacate the appointment of the arbitrator and shall return the case to the top of the arbitration hearing list, restore the arbitrator's name to the list of those available for selection to hear cases, and appoint a new arbitrator pursuant to sub-division (a). The 90 day period may be extended only by order of the court upon the motion of a party as provided by rule 1607(b).

8.) Rule 1607 of the California Rules of Court provides, that:

Rule 1607. Continuances

(a) Except as provided in this rule, the parties may stipulate to a continuance in the case, with the consent of the assigned arbitrator. An arbitrator shall consent to a request for a continuance if it appears that good cause exist. Notice of the continuance shall be sent to the arbitration administrator.

(b) If the arbitrator declines to give consent to a continuance, upon the motion of a party and for good cause

shown under the standards recommended of section 9 of the Standards of Judicial Administration, the court may grant a continuance of the arbitration hearing. In the event the court grants the motion, the party who requested the continuance shall notify the arbitrator and the arbitrator shall reschedule the hearing, giving notice to all parties to the arbitration proceedings.

(c) An arbitration hearing shall not be continued to a date later than 90 days after the assignment of the case to the arbitrator, including any time due to continuances granted under this rule, except by order of the court upon the motion of a party as provided in sub-division (b).

9.) Rule 1611 of the California Rules of Court provides that:

Rule 1611. Hearings; notice; when and where held

The arbitrator shall set the time, date and place of the hearing, and shall give notice of the hearing date to the parties at least 30 days prior to the date set for the

arbitration hearing. No hearings shall be set for Saturdays or legal holidays, except upon the agreement of all parties and the arbitrator. Hearings shall be scheduled so as to be completed not sooner than 35 days, nor later than 90 days from the date of the assignment of the case to the arbitrator, including any time due to continuances granted under rule 1607. Hearings shall take place in appropriate facilities provided by the court or selected by the arbitrator. As used in this paragraph, a hearing is completed upon filing of the arbitrator's award with the clerk pursuant to rule 1615(b).